

Dissenting Views to Accompany H.R. 1751, the “Secure Access to Justice and Court Protection Act of 2005”

H.R. 1751, the “Secure Access to Justice and Court Protection Act of 2005” was introduced to address acts of violence occurring in and around courthouses and against judges, prosecutors, witnesses, law enforcement, and other court personnel.¹ However, in its original form, the legislation failed to include several key provisions that would help it achieve this objective. Namely, it failed to provide state courts with adequate funding in the form of grants in order to improve courtroom safety and security. It also failed to provide the U.S. Marshals Service with the necessary resources to expand the investigative and protective services it currently provides to members of the federal judiciary.

Fortunately, thanks to the Majority’s willingness to work with the Democratic members on the committee, many of these issues have been adequately addressed. However, two important issues still remain. Specifically, the legislation’s creation of sixteen new mandatory minimum criminal sentences and its establishment of a new death penalty eligible offense. It is for these reasons, and those set out below, that we respectfully dissent.

The Legislation Imposes Ineffective and Discriminatory Mandatory Minimum Sentences

HR 1751 proposes to add 16 new mandatory minimum sentences to the current criminal code. Mandatory minimum penalties have been studied extensively and the vast majority of available research clearly indicates that they do not work. Among other things, they have been shown to distort the sentencing process, to discriminate against minorities in their application, and to waste valuable taxpayer money.

The Judicial Conference of the United States, which sees the impact of mandatory minimum sentences on individual cases as well as on the criminal justice system as whole, has expressed its deep opposition to mandatory minimum sentencing over a dozen times to Congress, noting that these sentences “severely distort and damage the Federal sentencing system undermine the Sentencing Guideline regimen” established by Congress to promote fairness and proportionality, and “destroy honesty in sentencing by encouraging charge and fact plea bargains.”

In fact, in a recent letter to Members of the Crime Subcommittee regarding HR 1279, the “Gang Deterrence and Community Protection Act of 2005,” the Conference noted that mandatory minimum sentences create “the opposite of their intended effect. Far from fostering certainty in punishment, mandatory minimums result in unwarranted sentencing disparity. Mandatory minimums treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society...” and..., “require the sentencing court to impose the same sentence on offenders when sound policy

¹ Hearing on H.R. 1751, the “Secure Access to Justice and Court Protection Act of 2005” Before the Subcommittee on Crime, Terrorism and Homeland Security of the Committee on the Judiciary, 109th Cong. 7, 10 (2005) (statement of Chairman Howard Coble)

and common sense call for reasonable differences in punishment.”

Additionally, both the Judicial Center in its study report entitled “The General Effects of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed” and the United States Sentencing Commission in its study entitled “Mandatory Minimum Penalties in the Federal Criminal Justice System” found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences.

The inconsistent and arbitrary nature of mandatory minimum sentences is made readily apparent by a quick analysis of section 2 of the bill. Section 2 establishes a one year mandatory minimum (with a 10 year maximum criminal penalty) for assaulting the immediate family member of a law enforcement officer or judge - if the assault results in bodily injury. However, just a few lines later in the same section, an identical criminal penalty is established for a simple threat. Thus, the same section of the bill makes two completely different actions, with considerably varying outcomes, subject to the same term of imprisonment.

Ultimately, the continued reliance on mandatory minimum sentences will not lead to a decrease in crime as some contend, but only further expand an ever-increasing prison population. And, with more than 2.1 million Americans currently in jail or prison - roughly quadruple the number of individuals incarcerated in 1985 - it's hard to see how anyone can continue with such a deeply flawed strategy. Today, the United States incarcerates its citizens at a rate 14 times that of Japan, 8 times the rate of France and 6 times the rate of Canada; and expends approximately \$40 billion a year in incarceration costs, alone.

The Legislation Unwisely Expands the Use of the Federal Death Penalty

H.R. 1751 unwisely creates a new death penalty eligible offense for anyone convicted of killing a federally funded public safety officer.² Expansion of the use of the federal death penalty in the current environment is patently unwarranted. The public is clearly rethinking the appropriateness of the death penalty, in general, due to the evidence that it is ineffective in deterring crime, is racially discriminatory, and is more often than not found to be erroneously applied. In a 23-year comprehensive study of death penalties, 68% were found to be erroneously applied. So, it is not surprising that 119 people sentenced to death for murder over the past 12 years have been completely exonerated of those crimes. Nor is it surprising with that such a lackluster record of death penalty administrations that several states have abolished the death penalty. For example, Connecticut has not executed anyone in 45 years.

Without a doubt, the increasing numbers of innocent people released from death row illustrates the fallibility of the current system. Last year, a University of Michigan study

² Section 4 defines a “federally funded public safety officer” as any individual who receives federal financial assistance while serving a public (federal, state or local government) agency in the capacity of a judicial officer, law enforcement officer, firefighter, chaplain, or as a member of a rescue squad or ambulance crew.

identified 199 murder exonerations since 1989, 73 of them in capital cases. Moreover, the same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated.

Equally disturbing is the fact that in its application, the death penalty is often applied in a racially and economically discriminatory manner. A careful study of the use of the death penalty in the United States undertaken by the United Nations' Human Rights Commission in 1998 issued a report which rightly concluded that: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."

Unfortunately, these problems are not confined to state systems. A recent Department of Justice survey documents racial, ethnic and geographic disparity in the charging of federal capital cases. Indeed, the review found that in 75 percent of the cases in which a federal prosecutor sought the death penalty, the defendant was a member of a minority group. The explanation for these extremely troubling disparities is unclear, but the possibility of discrimination and bias cannot be ruled out.

Description of Amendments Offered by Democratic Members

1. Amendment offered by Rep. Chabot & Rep. Conyers

Description of amendment: The Chabot/Conyers amendment provides federal judges with the discretion to allow media coverage of courtroom proceedings.

Vote on amendment: The amendment was adopted by a vote of 20 to 12. Ayes: Representatives Goodlatte, Chabot, Hostettler, Green, King, Franks, Conyers, Berman, Nadler, Lofgren, Waters, Delahunt, Schiff, Sanchez, Van Hollen, Wasserman Schultz, Coble, Meehan, Inglis, Weiner. Nays: Representatives Smith, Gallegly, Jenkins, Canon, Keller, Issa, Flake, Forbes, Feeney, Gohmert, Scott, Watt.

2. Amendment offered by Rep. Schiff & Rep. Weiner

Description of amendment: The Schiff/Weiner amendment directs the Attorney General, through the Office of Justice Programs, to award grants to state courts in order to enhance courtroom safety and security.

Vote on amendment: The amendment was agreed to by voice-vote.

3. Amendment offered by Rep. Schiff & Rep. Weiner

Description of amendment: The Schiff/Weiner amendment authorizes \$20 million for each of fiscal years 2006 to 2010 for the hiring of entry-level deputy marshals to provide judicial security; for the hiring of senior-level deputy marshals to investigate threats; and to enhance the Office of Protective Intelligence.

Vote on amendment: The amendment was agreed to by voice-vote.

4. Amendment offered by Rep. Scott

Description of amendment: The Scott amendment proposed to strike section 11 of the bill. Section 11 placed limits on the ability of an individual to apply for the writ of habeas corpus.

Vote on amendment: The amendment was agreed to by voice-vote.

5. Amendment offered by Rep. Scott & Rep. Waters

Description of amendment: The Scott/Waters amendment proposed to strike all of the mandatory minimum criminal sentences from the text of the substitute amendment.

Vote on amendment: Subject to an agreement between the Majority and Mr. Scott to work together to address some of the concerns highlighted by the amendment, the amendment was withdrawn.

6. Amendment offered by Rep. Jackson-Lee

Description of amendment: The Jackson-Lee amendment directs the Attorney General to establish a grant program for states to establish threat assessment databases.

Vote on amendment: The amendment was agreed to by voice-vote.

7. Amendment offered by Rep. Jackson-Lee

Description of amendment: The Jackson-Lee amendment authorizes the Director of Bureau Justice Assistance to make grants available to state and local prosecutors and law enforcement agencies for the establishment of juvenile and young adult witness assistance programs.

Vote on amendment: The amendment was agreed to without a recorded vote.

8. Amendment offered by Rep. Nadler

Description of amendment: Building upon the current incitement to riot statute, the Nadler amendment would make it a crime to incite, to organize, promote, encourage, participate in, or carry on, to commit any act of violence against a judge or other court personnel.

Vote on amendment: The amendment was withdrawn by Rep. Nadler.

9. Amendment offered by Rep. Scott

Description of amendment: The Scott amendment proposed to eliminate the new death penalty offense created in subsection (a) of section 4 of the substitute amendment.

Vote on amendment: The amendment was defeated by voice-vote.

John Conyers, Jr
Robert C. Scott
Melvin L. Watt
Sheila Jackson Lee
Maxine Waters